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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/918,223 07/30/01 SHANTZ

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EXAMINER

HM12/0917

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TRANS

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

09/17/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/918,223

Applicant(s)  
Shantz et al.

Examiner  
Susan Tran

Art Unit  
1615



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

Receipt is acknowledged of applicant's Letter filed 07/30/01.

#### ***Claim Rejections - 35 U.S.C. § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is indefinite in the use of the phrase "selected from the group consisting of Poloxamer 101 to Poloxamer 407". If Markush language is intended, the appropriate phrasing is "selected from the group consisting of Poloxamer 101 and Poloxamer 407".

#### ***Claim Rejections - 35 U.S.C. § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 4, 6, 10, 11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Coury et al. US 5,618,850.

Coury teaches a lotion, cream, or gel composition comprising natural or semi-synthetic polymer, e.g., polyethylene glycol (PEG); fragrance; moisturizers; emulsifying agent; water; and emollients, e.g., alcohol (columns 9 & 10; columns 13 & 14). The composition further comprising nonionic surfactant, and preservatives (columns 15 & 16). The composition can be formulated as creams or gels for use in conjunction with a suitable applicator such as a liquid-impregnated fabric, e.g., tissue wipe (column 17, lines 33-47). Example 6 discloses the use of a particular surfactant, e.g., Poloxamer.

***Claim Rejections - 35 U.S.C. § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu et al. US 5,871,763.

Luu teaches a substrate treated with lotion in a wipe or nonwoven material (column 3, lines 44-50). The lotion composition including non-ionic surfactant, Poloxamer, and cocophosphatidyl PG-diamonium chloride of quaternary ammonium compounds (column 8, lines

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48 through column 9, lines 1-59). The lotion composition further comprising water (column 4, lines 1-5), and fragrance (column 12, lines 49-60).

The examiner notes that the cited reference contains lotion having a low water content. However, the different in the amount of water does not impart patentable distinct, since the prior art obtains the same results desired by applicants, i.e., a substrate treated with lotion. Thus, it would have been obvious for one of the ordinary skill in this art to, by routine experimentation determine a suitable amount of water to obtain a desirable lotion suitable for use in a disposable wipe.

4. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu et al, in view of Blieszner et al. US 5,648,083.

Luu is relied upon for the reasons stated above. The reference is silent as to the percent by weight of water content in the lotion composition.

Blieszner teaches a composition comprising emulsions containing water and silicone oil, fragrances, moisteners, humectants, and emollients (column 4, lines 11-19). The amount of water in the composition is from about 80% to about 99.5% by weight of the composition (column 4, lines 30-35). The composition further comprising water soluble polymer (column 6, lines 60 through column 8).

The examiner notes that Luu's reference states the reason for low water content in the lotion is to prevent the growth of microorganism and to improve the stability of shelf storage.

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Means while, Blieszner teaches high water content lotion composition, anti-microbial is added as a preservative agent to improve shelf life to the products (column 8, lines 62 through column 9, lines 1-5). Thus, it would have been prima facie obvious for one of the ordinary skill in the art to modify Luu's lotion composition with the water content in view of the teaching of Blieszner. The reason for this modification is to obtain a desirable lotion composition suitable for using in a disposable wipe.

5. Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu et al., in view of Muckenfuhs US 5,332,118.

Luu is relied upon for the reasons stated above. Regarding to claims 14-20, the reference differs from applicant's invention by not teaching the substrate treated with lotion being in a Z-fold pop-up dispensing system.

Muckenfuhs teaches a dispensing sheet comprising nonwoven material, emulsion, moisturizers, emollients, preservative, and allantoin (column 10, lines 1-55). The sheets are premoistened with moistening agent (column 13, lines 60-65). The container for the sheets is a pop-up dispensing having an aperture (column 8, lines 30-40), and the sheets are in a Z-folded, interleaved configuration (column 5, lines 62-68). Thus, it would have been prima facie obvious for one of the ordinary skill in the art to modify Luu's substrate treated with lotion with the use of the pop-up dispensing system in view of the teaching of Muchenfuhs. The reason for this

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modification is to obtain a suitable container that will provide a predictable, repeatable separation process for lotion-wipes.

***Response to Arguments***

6. Applicant's arguments filed 07/30/01 have been fully considered but they are not persuasive. The examiner maintains the original rejections.

Applicant argues that there is no teaching or motivation in Luu for one of ordinary skill to even consider that Luu is relevant to provide a lotion for a wipe that is "particularly suited for reliable pop-up dispensing".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., wipe that is "particularly suited for reliable pop-up dispensing") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that Luu does not teach the minimum percent of water content in the lotion. However, the examiner relies on the teaching of Luu in column 4, lines 1-5, wherein the lotion contains about 15% water; and Luu's abstract teaches the lotionized substrate can be prewetted with water. It is the position of the examiner that, the different in the amount of water does not impart patentable distinct since the prior art obtains the same results desired by

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applicants, i.e. a substrate treated with lotion. Thus it would have been prima facie obvious to one of the ordinary skill in the art to, by routine experimentation determine a suitable amount of water and suitable amount of antimicrobial agent for a well known purpose, because the reference teaches the advantageous results accrue in the use of lotionized substrate.

Applicant admitted that Muckenfuhs is directed to an improved pop-up wipes dispenser with modified Z-fold stack configuration. It is the position of the examiner that it would have been prima facie obvious for one of the ordinary skill in the art to prepare the Luu's lotionized substrate in the pop-up dispenser in view of the teaching of Muckenfuhs, because the skilled artisan would have been motivated to use the pop-up dispensing system to provide a predictable performance from the first sheet in the package to the last sheet, a reliable separation even after relatively long periods of storage, and to maintain the moisture content of the lotionized substrate.

### *Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday to Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.




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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

  
THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600